ZARINA TAN SRI JAAFAR & ORS A

v.

PERBADANAN PENGURUSAN IXORA

HIGH COURT MALAYA, KUALA LUMPUR B
PRASAD SANDOSHAM ABRAHAM JC
[SUIT NO: S-22-518-2009]
2 MARCH 2010

LAND LAW: *Strata title - Management corporation - Validity of - Whether administrator to be appointed* C

There were two related applications before the court for the appointment of an administrator. The dispute was in regard to the composition of the defendant appointed under the Strata Titles Act 1985 ('the Act'). D

Held (dismissing the applications):

(1) A court should only exercise its powers to appoint an administrator under s. 51(1) of the Act if the following factors E existed: (i) the Management Corporation and/or the Management Council was paralysed from performing its functions and duties prescribed by the Act for any reason whatsoever that affected the proper management of the units and interests of the unit holders; (ii) the Management F Corporation and/or the Management Council was in breach of the statutory provisions of the Act or any other relevant Act or regulations; (iii) whether alternative remedies provided in the Act were resorted to; and (iv) whether justice required intervention of court. (para 5) G

(2) The impugned meetings in the present case were ratified as valid by the appropriate authorities. An AGM was recently held. There was in place a Management Corporation and an independent audit of the management accounts were carried out. In the circumstances, there was no basis to appoint an H administrator. (para 7)

Obiter:

(1) It was observed that a Strata Titles Board provided for in Part I IXA of the Act had yet to be appointed by the Minister. The Act envisaged the Strata Titles Board as the heart and soul of

the Act and its absence rendered the Act ineffective in many aspects. It was hoped that the relevant authorities would look into this matter on an urgent basis.

Legislation referred to:
Strata Titles Act 1985, ss. 45, 51(1)

Other source(s) referred to:
Teo Keang Sood, *Strata Title in Singapore & Malaysia*, 3rd edn, pp 561-562

For the plaintiff - Balraj Singh; M/s Firdaus Shanti Bhupin
For the defendant - Dato' Manpal Singh (Ayub Yazid with him); M/s Manjit Singh Sachdev, Mohammad Radzi & Partners

Reported by Usha Thiagarajah

JUDGMENT

Prasad Sandosham Abraham JC:

[1] I heard encl. 1 in Saman Pemula No. S3-24-2324 and encl. 4 in S22-518-2009 as both applications involved the appointment of an Administrator. As the factual basis was the same and in both applications involved IXORA apartments Jalan Tun Razak, Kuala Lumpur and in both applications in both suits the defendant is the Management Corporation IXORA, with the consent of parties, I took both applications under consideration together.

[2] This is a dispute among irate unit owners with regard to the composition of the Management council appointed under the Strata Titles Act 1985 [Act 318], the said Act. The factual matrix of the dispute is set out below:

1. On 6 October 1999 the defendant was established.

2. On 2 December 2006 one Mohd Radzi bin Ismail (Radzi herein) resident of unit 3-01-03 Ixora Apartment, *vide* letter to Pentadbir Tanah, Wilayah Persekutuan Kuala Lumpur, requested for the appointment of a temporary Ahli Jawatankuasa (AJK herein).

3. On 1 December 2006 Pengarah Tanah dan Galian, Wilayah Persekutuan *vide* letter to Radzi informed that all members of Perbadanan Pengurusan Ixora have resigned and gave permission to Radzi to call for an Extraordinary General Meeting (EGM) to appoint members of Perbadanan Pengurusan Ixora.

4. On 5 January 2007 Radzi sent EGM call notices to registered residents. The Agenda included:

   a. to determine the number of members of the council and to elect the council;

   b. to elect COUNCIL MEMBERS replacing the previous council members who had resigned.

5. Radzi was appointed as the person who would call for the EGM to appoint the members. Hence, Radzi was the EGM co-ordinator that was to be held.

6. On 12 January 2007 Pengarah Tanah dan Galian *vide* letter to Perbadanan Pengurusan Ixora (Attention to Radzi) informed the reason the EGM that was to be held on 14 January 2007 was only to appoint the members of Perbadanan Pengurusan Ixora as instructed by Pengarah Tanah dan Galian *vide* their letter dated 6 December 2006.

7. The Agenda was inconsistent with letter dated 12 January 2007 from the Pengarah Tanah dan Galian. Radzi did not send the new notices with the amended agenda although he received the letter much earlier. Radzi did not send the notice to the Chargees pursuant to Second Schedule Strata Titles Act 1985. The Notice was sealed with the Common Seal without the consent of the AJK and not signed by two members.

8. On 13 January 2007 at 1pm, Radzi organized a nomination. The nomination box was opened at 1.30pm.

9. On 14 January 2007 Radzi called for said EGM but was adjourned to 21 January 2007 for lack of quorum. Although the EGM was adjourned to 21 January 2007 Radzi called for a discussion.

10. On 21 January 2007 Radzi decided that the nominees need not attend and qualified automatically to be appointed. If at all, it was alleged the actions of Radzi contravened procedures and existing laws.

11. On 21 January 2007 the EGM took place with 17 votes with a show of hands whereas 35 registered owners including the proxies attended. As 18 owners ie, more than ½ quorum not

taken into account may be represented with proxies holding more than 1 proxy form. Anthony Jarrat made close inspection of counting votes of those who voted.

12. The EGM held on 21 January 2007 is in contravention of the Strata Titles Act 1985. (so alleged by the plaintiffs).

13. On 5 February 2007 the third plaintiff sent a letter of complaint to the Pejabat Tanah dan Galian.

14. On 26 February 2007 Pejabat Pengarah Tanah dan Galian *vide* letter to Jagvinder Singh requested that the management scheme be returned to Perbadanan Pengurusan Ixora.

15. On 27 February 2007 Perbadanan Pengurusan Ixora *vide* letter to second plaintiff requested for the return of all keys and documents belonging to Perbadanan Pengurusan Ixora.

16. On 27 February 2007 the 1st plaintiff *vide* her solicitors sent a letter to the defendant.

17. On 5 March 2007 Jabatan Ketua Pengarah Tanah dan Galian *vide* letter to Pengarah Jabatan Tanah dan Galian requested an investigation to be carried out to investigate "Complaint and Protest to the Ixora Apartment Extraordinary General Meeting."

18. On 26 March 2007 Perbadanan Pengurusan Ixora *vide* letter to Pejabat Pengarah Tanah dan Galian stated that the EGM held on 14 January 2007 and adjourned to 21 January 2007 was carried out with mutual agreement of the floor and in accordance with Strata Titles Act 1985.

19. On 27 March 2007 Pejabat Pengarah Tanah dan Galian *vide* letter to Perbadanan Pengurusan Ixora informed that the minutes of the EGM have been filed and the appointed members at the EGM must carry out their duties pursuant to the Strata Titles Act 1985.

20. On 28 March 2007 Pejabat Pengarah Tanah dan Galian *vide* letter to Ketua Pengarah Jabatan Tanah dan Galian stating that Pejabat Pengarah Tanah Dan Galian will provide a detailed report after conducting the investigation.

21. On 12 June 2007 Jabatan Ketua Pengarah Tanah dan Galian *vide* letter to Katherine Chong, submitted a report carried out by Pejabat Pengarah Tanah dan Galian regarding the "Complaints and Protest to the Ixora EGM". A

22. On 15 September 2007 the third plaintiff lodged a police report that Perbadanan Pengurusan Ixora is not valid as they were not chosen pursuant to the provisions of the Strata Titles Act 1985 and the need to appoint an Administrator. B

23. On 17.9.2007 DBKL *vide* letter to Pengerusi Perbadanan Pengurusan Ixora confirmed 6 members of Perbadanan Pengurusan Ixora. C

24. On 1 October 2007 DBKL *vide* letter to Pengerusi Perbadanan Pengurusan Ixora stated that the EGM held on 21 July 2007 is in order an in accordance with the Strata Titles Act 1985. D

25. On 1 October 2007 DBKL *vide* letter to second plaintiff stated that the EGM held on 21 July 2007 is in order and in accordance with the Strata Titles Act 1985 and to return all keys, documents and management accounts to the appointed members. E

26. On 29 May 2008 Perbadanan Pengurusan Ixora served a Notice of the 4th Annual General Meeting (AGM). F

27. On 17 June 2008 AGM was held.

[3] The principal grounds relied on by the plaintiffs that can be gleaned from the various affidavits are that the meetings leading to the appointment of the Management Corporation are being impugned for breach of the provisions of the said Act. Further the operation of the Management fund maintained by the said corporation pursuant to s. 45 of the said Act was riddled with irregularities. Under those circumstances, an administrator's appointment under s. 51 of the said Act was appropriate. G H

[4] Section 51(1) of the said court is set out for ease of reference: I

A (1) A court of competent jurisdiction on the application of the management corporation, a proprietor or any other person or body having registered interest in a parcel may, appoint an administrator for the management corporation for a fixed or indefinite period and on such terms and conditions as to
B remuneration or otherwise as the court thinks fit.

I considered s. 51 of the said Act, and I also was reminded by counsel that there was no local authority on point. The court was referred to the Australian case of *Re Steel & Ors* and the
C conveyancing (Strata Titles) Act 1961 (1968) 88 WN (PT 1) (NSW) p. 467 which was referred to in the text *"Strata Title in Singapore & Malaysia"* (3rd edn) Teo Keang Sood pp. 561 to 562. The court in that case was of the view that a clear and continuing failure to observe statutory obligations will constitute grounds for
D seeking the appointment of an administrator as it may be the only effective remedy and one the court should not shrink from exercising.

[5] In my judgment a court should only exercise its powers to
E appoint an administrator under s. 51(1) of the said Act if the applicant can satisfy the court the following factors exist:

(a) the Management Corporation and/or the Management Council is paralysed from performing its functions and duties prescribed by the said Act for any reason whatsoever that affects the proper
F management of the units and/or apartments and affects the interests of the unit holders.

(b) in the alternative the Management Corporation and/or the Management Council are in breach of the statutory provisions
G of the said Act or any other relevant Act or regulations;

(c) whether alternative remedies provided in the said Act have been resorted to;

(d) in any event, in the absence of any of these factors, justice in
H each particular case would require intervention of court.

[6] I would liken these principles by way of analogy to that of an appointment of an interim receiver and manager in the affairs of a company and/or a partnership (ie, to preserve and/or manage the
I units/apartment. The section provides for an administrator to be appointed for the management corporation and to its exclusion.

[7] Looking at the facts of the present case the impugned meetings have been ratified as valid by the appropriate authorities. I have been informed by counsel that in fact, an AGM was recently held, there is in place a Management Corporation and an independent audit of the Management accounts has been carried out. Taking these factors into account, I was of the view that there was no basis to appoint an administrator and I dismissed both applications accordingly.

[8] In passing, I observe and this has been confirmed by counsel that a Strata Titles Board provided for in Part IX A of the said Act has not yet been appointed by the Minister. The said Act envisaged the Strata Titles Board as the heart and soul of the Act and its absence renders the said Act ineffective in many aspects. It is hoped that the relevant authorities will look into this on an urgent basis.